
Introduced by Senator Lockyer
(Principal coauthor: Assembly Member Bustamante)

July 22, 1997

Senate Concurrent Resolution No. 54—Relative to
employment compensation.

LEGISLATIVE COUNSEL'S DIGEST

SCR 54, as introduced, Lockyer. Employment: overtime compensation.

Existing law establishes the Industrial Welfare Commission and authorizes the commission to adopt rules, orders, and regulations governing the hours and conditions of employment in the various occupations, trades, and industries in which employees are employed in California. Existing law also provides that 8 hours of labor constitutes a day's work, as specified.

This measure would declare that the action of the commission in amending certain wage orders to eliminate the requirement to pay overtime compensation for work in excess of 8 hours per day is in conflict with the intent of the Legislature, exceeds the commission's authority, eliminates certain employee protections, and reduces the number of employees subject to other specified provisions of law.

Fiscal committee: no.

1 WHEREAS, In 1995 Governor Wilson sponsored
2 Assembly Bill 398 (AB 398) which proposed to eliminate
3 the requirement of state law that an overtime rate of
4 compensation be paid to an employee for work in excess

1 of eight hours per day and proposed instead to conform
2 California's overtime compensation standard to the
3 standard of the federal Fair Labor Standards Act of 1938,
4 which requires an overtime rate of compensation to be
5 paid to an employee only for work in excess of 40 hours
6 per week; and

7 WHEREAS, AB 398, as proposed by Governor Wilson,
8 was not enacted by the Legislature; and

9 WHEREAS, At the request of Governor Wilson, the
10 Industrial Welfare Commission on April 11, 1997,
11 amended Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90
12 to eliminate the daily overtime standard and instead to
13 conform the overtime standard of those orders to the
14 overtime standard of the federal Fair Labor Standards
15 Act of 1938; and

16 WHEREAS, The Legislature, in adopting Sections
17 1182.5, 1182.6, 1182.7, 1182.9, and 1183.5 of the Labor
18 Code, only approved limited exceptions to the eight-hour
19 day standard of Section 510 of the Labor Code contained
20 in Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90, as
21 previously adopted by the Industrial Welfare
22 Commission, and afforded additional statutory protection
23 for employees subject to those exceptions; and

24 WHEREAS, On June 27, 1997, the Superior Court for
25 the City and County of San Francisco determined that
26 the actions of the Industrial Welfare Commission were
27 valid, and stated that, "The Legislative history indicates
28 to this court that there is no basis to conclude that I.W.C.
29 was not free under Californial law to modify its Wage
30 Order even if the modification renders certain statutes
31 unnecessary"; and

32 WHEREAS, The Legislature enacts statutes in
33 recognition of the time-honored rule of law that no
34 administrative agency may impair or eliminate the scope
35 of statutory provisions; and

36 WHEREAS, The Legislature specifically deleted the
37 amount of \$274,000 from the Budget Act of 1996, which
38 had been proposed for use by the Industrial Welfare
39 Commission to amend its wage orders to eliminate daily
40 overtime and to require overtime to be paid only when



1 the total hours worked per week exceeds 40 hours; now,
2 therefore, be it

3 *Resolved by the Senate of the State of California, the*
4 *Assembly thereof concurring,* That the Industrial Welfare
5 Commission acted contrary to the intent of the
6 Legislature and in excess of the authority of the Industrial
7 Welfare Commission in eliminating daily overtime from
8 Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90,
9 eliminating the protection afforded employees under
10 Section 1182.5 and subdivision (b) of Section 1183.5 of the
11 Labor Code, and reducing the number of employees
12 afforded protection under the other provisions of Section
13 1183.5 of the Labor Code.

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